Ronald Skillens d/b/a Skillens Enterprise Corp. *and* National Maritime Union of America, AFL-CIO. Case 30-CA-6149

April 27, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on November 10, 1980, by National Maritime Union of America, AFL-CIO (the Union), and duly served on Ronald Skillens d/b/a Skillens Enterprise Corp. (Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30, issued a complaint and notice of hearing on October 14, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent has refused and continues to refuse to make contributions to the Union's health and welfare and pension plans in violation of its collective-bargaining agreement with the Union.

On December 21, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on December 30, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent filed no response to the Notice To Show Cause, and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent states that unless an answer is filed by Respondent within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to Exhibit 4 submitted by counsel for the General Counsel, on December 11, 1981, she sent by ordinary mail a letter citing the above-quoted portion of Section 102.20 and advising Respondent that unless an answer was received by noon on December 18 she would move for summary judgment. As noted above, no answer has been received from Respondent, nor has Respondent responded to the Notice To Show Cause.

No good cause having been shown for Respondent's failure to file an answer, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Ronald Skillens d/b/a Skillens Enterprise Corp., a sole proprietorship with an office and place of business at Topeka, Kansas, was at all material times herein engaged in providing janitorial services at the United States Army base at Fort McCoy, Wisconsin. During the 12-month period preceding the issuance of the complaint, a representative period, Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000 in States other than the State of Kansas.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

National Maritime Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The following employees constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All janitors, porters and cleaners performing janitorial services at Fort McCoy, excluding office clerical employees, guards and supervisors as defined in the Act.

Prior to November 1, 1980, the Tamp Corporation (Tamp) had a contract to provide janitorial services at Fort McCoy, Wisconsin, and had recognized the Union as the collective-bargaining representative of its employees in the above-described unit. In addition, Tamp and the Union had signed a collective-bargaining agreement which was effective from July 1, 1980, through June 30, 1983.

On November 1, 1980, Respondent assumed Tamp's contract to provide janitorial services at McCoy and since that date Respondent has been engaged in the same business operations, at the same location, selling the same services to the same customer. On November 3, 1980, Respondent hired a majority of the employees previously hired by Tamp. Respondent therefore has continued to be the employing entity and is a successor to Tamp.

Accordingly, the Union is, and has been at all times material herein, the exclusive representative of the employees in the unit described above within the meaning of Section 9(a) of the Act.

B. *The 8(a)(5) Violation*

On or about December 22, 1980, the Union and Respondent entered into a collective-bargaining agreement relating to the wages, hours, and other terms and conditions of employment of the employees in the above-described unit. The December 22, 1980, agreement, *inter alia*, obligated Respondent to make contributions to the ITPE-NMU health and welfare plan and pension plan provided for in Appendixes "C" and "G," respectively, of the agreement. Respondent at all material times has refused, and continues to refuse, to make the requisite contributions.[1]

Accordingly, we find that Respondent has, since December 22, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by failing and refusing to make contributions to the ITPE-NMU health and welfare plan and pension plan as provided for in Appendixes "C" and "G," respectively, of the collective-bargaining agreement it executed with the Union on that date, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent violated Sections 8(a)(5) and (1) and 8(d) of the Act by failing to make the required contributions to the ITPE-NMU health and welfare plan and pension plan required under its December 22, 1980, collective-bargaining agreement with the Union. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to make whole its employees by transmitting the required contributions to the ITPE-NMU health and welfare plan and pension plan retroactive for the period prescribed in the agreement.[2]

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[1] On December 30, 1980, and January 1, 1981, respectively, Respondent and the Union executed a settlement agreement with respect to Respondent's obligations under the agreement, which was approved by the Regional Director for Region 13 on January 29, 1981, and which provided, *inter alia*, "(c) Respondent make sufficient payments to the ITPE-NMU health and welfare plan to provide coverage for employees in the unit retroactive to November 1, 1980." Thereafter, Respondent failed to honor this provision of the settlement agreement and on June 30, 1981, the Regional Director vacated and set aside the agreement. On October 6, 1981, the Regional Director reinstated the settlement agreement except for the above-quoted provision in light of Respondent's alleged refusal to make the contributions to the Union's health and welfare plan and its alleged refusal to contribute to the Union's pension plan.

[2] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the additon of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at

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The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Ronald Skillens d/b/a Skillens Enterprise Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. National Maritime Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Ronald Skillens d/b/a Skillens Enterprise Corp. is a successor of the Tamp Corporation.
4. All janitors, porters, and cleaners performing janitorial services at Fort McCoy, Wisconsin, excluding office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. At all times material herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.
6. By failing to make the required contributions to the ITPE-NMU health and welfare plan and pension plan, Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ronald Skillens d/b/a Skillens Enterprise Corp., Fort McCoy, Wisconsin, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with National Maritime Union of of America, AFL-CIO, by failing and refusing to make contributions to the ITPE-NMU health and welfare plan and pension plan as required by the collective-bargaining agreement between him and the Union executed on December 22, 1980.

(b) In any like or related manner interfering with, restraining, or coercing his employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with the Union. The appropriate unit for the purpose of collective bargaining is:

> All janitors, porters and cleaners performing janitorial services at Fort McCoy, excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Make whole his employees by transmitting contributions to the ITPE-NMU health and welfare plan and pension plan as required by his collective-bargaining agreement with the Union in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and make available to the Board or its agents, upon request, all records necessary to analyze the amount due in the effectuation of this remedial order.

(d) Post at his Fort McCoy, Wisconsin, facility copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Company*, 240 NLRB 1213 (1979).

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

I WILL NOT refuse to bargain collectively with National Maritime Union of America, AFL-CIO, by failing and refusing to make contributions to the ITPE-NMU health and welfare plan and pension plan as required by my collective-bargaining agreement with the Union.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of their rights guaranteed under Section 7 of the National Labor Relations Act, as amended.

I WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement between myself and the above-named Union. The appropriate bargaining unit is:

All janitors, porters and cleaners performing janitorial services at Fort McCoy, excluding office clerical employees, guards and supervisors as defined in the Act.

I WILL make whole my employees by transmitting contributions to the ITPE-NMU health and welfare plan and pension plan as required by my collective-bargaining agreement with the Union.

RONALD SKILLENS D/B/A SKILLENS ENTERPRISE CORP.